

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL CASE NO. 1:04cr92

UNITED STATES OF AMERICA,)

)

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vs.

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JEREMY LUJAN AIKEN.)

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ORDER

THIS MATTER is before the Court following the limited remand from the Fourth Circuit Court of Appeals in response to Defendant's *pro se* Notice of Appeal, filed August 24, 2009. [Doc. 74]. This matter was remanded for the limited purpose of considering whether good cause or excusable neglect exists such that the Fourth Circuit Court of Appeals may consider the Defendant's otherwise untimely appeal.

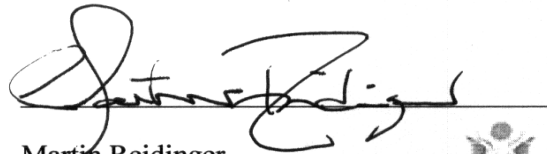
The Court's Order denying the Defendant's motion for reduction of sentence was entered on July 31, 2009. [Doc. 72]. Thus, the Defendant was required to have filed his notice of appeal by August 14, 2009. See Fed. R. App. P. 4(b) (1) (requiring notice of appeal to be filed within ten days of entry of judgment or order being appealed); Fed. R. App. P.

26(a)(2) (excluding intermediate Saturdays, Sundays, and legal holidays from the ten-day period). The Defendant's Notice of Appeal, however, appears to have been deposited in the prison's internal mail system on August 19, 2009, and therefore was untimely filed. [See Doc. 74 at 3].

Pursuant to Rule 4(b)(4) of the Rules of Appellate Procedure, the Court may extend the time to appeal for a period of not more than 30 days upon a showing of excusable neglect or good cause. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985). Having found no demonstration of good cause or excusable neglect in the Defendant's Notice of Appeal, the Court will grant the Defendant an opportunity to make such a showing.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendant shall have ten (10) days from the entry of this Order to show excusable neglect or good cause warranting an extension of the ten-day appeal period.

Signed: December 10, 2009


Martin Reidinger
United States District Judge

